

After reviewing the record and considering the arguments, the Appeals Board concludes that the award of penalties should be affirmed.

Claimant was initially awarded temporary total disability and medical benefits by Order dated December 10, 1996. Medical was to be at the direction of Dr. Gary W. Reiswig. Dr. Reiswig referred claimant to Kris Lewonowski, M.D. Following an MRI, Dr. Lewonowski reported there was nothing further he could do and he then referred claimant to Dr. Michael H. Munhall for evaluation and treatment.

Claimant cancelled appointments with Dr. Munhall on January 23, 1997, and January 28, 1997. On January 28, she initially rescheduled for a later time that day but then did not show or call. Claimant also cancelled an appointment for February 10, 1997. As of March 3, 1997, respondent terminated temporary total disability benefits. Claimant responded by filing a Motion for Penalties after making appropriate written demand.

The Administrative Law Judge issued the first Order for penalties on April 1, 1997. The Appeals Board concluded that respondent had not been given proper notice and reversed that Order. While the penalties order was on appeal, respondent also filed a motion to terminate temporary total disability benefits. A hearing was held on the motion to terminate benefits June 3, 1997, and after hearing the evidence, the Administrative Law Judge concluded that respondent did not have justification for terminating benefits. Respondent did not appeal this order. Benefits were brought current on June 4, 1997, and respondent continued to pay temporary total disability benefits until November 20, 1997, when the benefits were terminated by an agreed order.

The second hearing was held on the Motion for Penalties on December 2, 1997. There is no contention that respondent was not given proper notice of this hearing. After this second hearing, the Administrative Law Judge again ordered penalties. This second Order for penalties is the subject of the current appeal.

As indicated, respondent first contends that the Administrative Law Judge did not have authority to conduct a second hearing. The Appeals Board disagrees. The decision to reverse the initial Order for penalties was based upon procedure only. The Board did not, by its order, intend to preclude and, in fact, anticipated that a second hearing would be held after proper notice was given.

Respondent also contends that it had justification for termination of benefits and; for that reason, penalties are inappropriate. Again, the Board disagrees. Respondent was under an order to provide temporary total disability benefits. The appropriate procedure for terminating those benefits, in the event claimant failed to cooperate with medical treatment, was a motion to terminate with an opportunity for a hearing on the issue. Respondent eventually followed that procedure and filed the motion to terminate which resulted in the hearing of June 3, 1997. The Appeals Board finds the Order for penalties reasonable and appropriate in this case.

**WHEREFORE**, the Appeals Board finds that the Order of Administrative Law Judge John D. Clark, dated December 2, 1997, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Alexander B. Mitchell, II, Wichita, KS  
Matthew S. Crowley, Topeka, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director